



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1995

Mr. Robert J. Gervais
Assistant City Attorney
Legal Department
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR95-730

Dear Mr. Gervais:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32577.

The City of Galveston (the "city") has received a request for correspondence concerning safety violations at the Galveston Municipal Airport (the "airport") by Galv-Aero Flight Center ("Galv-Aero"). You assert that the correspondence is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

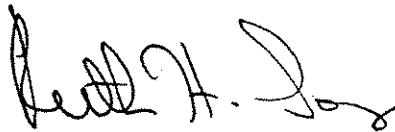
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You submitted to this office information about a lawsuit styled *City of Galveston vs. B.J. Aviation, Inc., d/b/a Galv-Aero Flight Center, and William T. Brown*, which is pending in the 122nd Judicial District. Among the allegations is that Galv-Aero violated its lease by creating certain safety hazards. Our review of the correspondence at issue shows that it is related to the subject matter of the litigation. Since the city has met its burden of showing the applicability of section 552.103(a), the correspondence at issue may be withheld from disclosure.¹

¹You also asserted that litigation is pending against the requestor's company, Jet Tech, Inc. ("Jet Tech"), and have submitted information showing that the city may bring suit against Jet Tech to recover back rentals and other sums. However, you did not explain how the correspondence at issue is related to that litigation.

We note, however, that once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. Thus, information the opposing parties in the litigation have already had access to may not be withheld from disclosure. The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the city's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 32577

Enclosures: Submitted documents

cc: Mr. Jerry E. Griffin
Jet Tech, Inc.
1800 West Loop South, Suite 888
Houston, Texas 77027
(w/o enclosures)